

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY McCaffrey and SMITHSONIAN INSTITUTION,
MUSEUM OF AMERICAN HISTORY, Washington, DC

*Docket No. 98-2240; Submitted on the Record;
Issued February 9, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

In the present case, appellant filed a claim alleging that her diagnosed skin condition of pemphigus vulgaris was causally related to her federal employment. By decision dated September 19, 1995, the Office denied the claim. An Office hearing representative remanded the case for further development of the medical evidence in a decision dated October 9, 1996.

In a decision dated March 17, 1997, the Office denied the claim on the grounds that the medical evidence was insufficient to establish causal relationship between pemphigus vulgaris and exposure to toxic substances at work.

By letter dated March 16, 1998, appellant requested reconsideration of her claim. In a decision dated May 4, 1998, the Office determined that appellant's request for reconsideration was not sufficient to warrant reopening the case for review of the merits of the claim.¹

The Board has reviewed the record and finds that the Office properly determined that appellant's request for reconsideration was insufficient to require reopening the claim for merit review.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.² Since appellant filed her appeal on July 20, 1998, the only decision

¹ A nonmerit review on a request for reconsideration is a limited review to determine if the evidence is sufficient under 20 C.F.R. § 10.138(b)(1) to reopen the case for merit review, and the only right of appeal is to the Board. A merit review is a determination, pursuant to the discretionary authority granted by 5 U.S.C. § 8128(a), of whether the evidence is sufficient to modify the prior decision, and appeal rights include a one-year period to request reconsideration or appeal to the Board; *see* 20 C.F.R. § 10.138; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7(8) (June 1997).

over which the Board has jurisdiction on this appeal is the May 4, 1998 decision denying her request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office's regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.138(b)(2) states that any application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.⁵

As noted above, the underlying issue in the case is a medical issue on causal relationship between appellant's skin condition and exposure to substances during her federal employment. Appellant did not submit any additional medical evidence with her request for reconsideration. The Board notes that appellant requested time to submit additional evidence, but she had one year from the March 17, 1997 decision to submit additional evidence, as well as additional time prior to the May 4, 1998 decision.

The March 16, 1998 request for reconsideration quotes from the second opinion physician, Dr. Sandra I. Read, and states that her conclusions vary only insignificantly from the treating dermatologist. The request for reconsideration does not show that the Office erroneously applied or interpreted a point of law, nor does it advance a relevant point of law or fact not previously considered.

Accordingly, the Board finds that appellant has not met any of the requirements of section 10.138(b)(1). The Office therefore properly refused to reopen the claim for merit review under 5 U.S.C. § 8128(a).

² 20 C.F.R. § 501.3(d).

³ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ 20 C.F.R. § 10.138(b)(2); *see also* Norman W. Hanson, 45 ECAB 430 (1994).

The decision of the Office of Workers' Compensation Programs dated May 4, 1998 is affirmed.

Dated, Washington, D.C.
February 9, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member